United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 11-679**
	)	**Issued: October 6, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2011 appellant filed a timely appeal from July 16 and November 16, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained left hand or shoulder injury causally related to the April 3, 2010 employment incident.

FACTUAL HISTORY

On April 5, 2010 appellant, then a 57-year-old sales associate and distribution clerk, filed a traumatic injury claim alleging that on April 3, 2010 he sustained injuries to his left wrist when he tried to lift a heavy parcel on a truck and felt a sting under his left arm. In a supplemental

[1] 5 U.S.C. § 8101 *et seq.*

statement, he explained that he heard a pop in his shoulder when reaching for mail so he glided the package towards himself. Appellant continued to work, but as time went on he felt numbness in his last three fingers and left hand knuckles. He also submitted a witness statement and physical therapy notes dated from April 28 to May 27, 2010.

In April 4, 2010 emergency room discharge instructions, Dr. Joshua S. Kooistra, Board-certified in emergency medicine, treated appellant for wrist drop. In a hospital record, he and a physician's assistant stated that, on Friday at approximately 3:00 p.m., appellant was lifting and moving a box of mail when he felt a pop in his left upper humerus. Later that day, Dr. Kooistra felt stinging in his left shoulder and noticed that he experienced difficulty when lifting a cup and holding up his wrist. Upon examination, he noted that appellant's left upper extremity had 3/5 strength in the left thumb abduction, as well as left wrist extension. Dr. Kooistra also observed good sharp-dull discrimination in the C5-8 and T1 nerve root levels. Appellant's radial pulse was full bilaterally and capillary refill was less than two seconds. Dr. Kooistra diagnosed radial nerve palsy on appellant's left side.

In an April 9, 2010 report, Dr. Bernard Kent Maupin, a Board-certified orthopedic surgeon, stated that on April 3, 2010 appellant was lifting a heavy box with his forearm in a neutral position, which caused a forced supination of the arm. Appellant complained of pain and numbness, which seemed to be mostly radial with some small fingers and difficulty with wrist extension on the left side. Upon examination, Dr. Maupin observed that appellant's left shoulder mobility was slightly limited with some anterior discomfort and palpation but his rotator cuff, deltoid, biceps and triceps strength appeared good. In addition, appellant could only extend his left wrist about 35 degrees compared to 60 degrees on the right. He tested negative for Tinel's, left cubital tunnel, Formen's test and Allen's test. Dr. Maupin also reviewed an x-ray of appellant's left shoulder and elbow and noted good joint spaces with no significant spurring or arthritis. His impression was negative for appellant's left shoulder and elbow.

In an April 16, 2010 report, Dr. Maupin noted appellant's complaints of continued pain, discomfort, weakness, and numbness on the dorsal aspect of his hand, wrist and forearm. The examination revealed that appellant's left wrist extension was somewhat less than the right with no obvious muscle atrophy and that tendon functions appeared intact with slightly decreased wrist extension strength. Dr. Maupin diagnosed left upper extremity pain and opined that appellant may have had somewhat of a traction injury possible to the radial nerve.

In an April 20, 2010 duty status report, Dr. Maupin stated that appellant had a lifting injury, which resulted in left wrist pain and a sprained left wrist. He also provided an April 18, 2010 work excuse slip and April 16, 2010 physical therapy referral.

In a May 14, 2010 report, Dr. Maupin reviewed appellant's history and conducted an examination for his complaint's of left hand numbness and pain. The examination of the left elbow revealed no soft tissue swelling, effusion or ecchymosis. Appellant's range of motion was 45/60 degrees with no crepitus on the left and no subluxation of the ulnar nerve. The examination of the left shoulder demonstrated no skin abnormalities, ecchymosis and edema. Appellant tested negative for Hawkin's, Neer and cross arm adduction. Dr. Maupin diagnosed left wrist and forearm pain and left shoulder pain.

In a May 13, 2010 report, Dr. James Ellis, Board-certified in physical medicine and rehabilitation, noted that on April 3, 2010 appellant was working when he grabbed a heavier parcel and slipped. He experienced numbness in his left arm, primarily in the dorsum of his hand and fourth and fifth fingers with some tingling. Upon examination, Dr. Ellis observed no cervical lymphadenopathy and sternoclavicular tenderness. Appellant's Spurling's, Forment's, Wartenberg's and Benediction signs tests were negative with minimally positive Tinel's at the ulnar groove. Dr. Ellis also observed subtle light touch decrement in the fifth digit and dorso-ulnar cutaneous with normal medial and antebrachial cutaneous. An electrodiagnostic examination further revealed normal median motor distal latency, ulnar motor, radial motor, median and ulnar palmars, and dorso-ulnar cutaneous. Dr. Ellis concluded that there was no evidence of radial tunnel syndrome, carpal tunnel syndrome and radiculopathy.

On June 9, 2010 OWCP accepted appellant's claim as a minor injury with no time lost and awarded medical care and treatment costs up to $1,500.00. It also advised him that the evidence submitted was insufficient to support his traumatic injury claim because the medical evidence of record did not contain a definitive diagnosis of any medical condition nor a physician's opinion as to how the April 3, 2010 incident caused any diagnosed condition.

Appellant resubmitted Dr. Maupin's medical reports along with additional evidence. In a June 18, 2010 report, Dr. Maupin examined appellant's left shoulder and did not observe any atrophy, ecchymosis, edema or posterior capsule tightness. He found mild tenderness at the greater tuberosity and normal neck motion. Appellant also tested positive for Hawkin's and Neer impingement sign, but cross arm adduction and lift-off tests were negative. Dr. Maupin opined that appellant had probable left shoulder impingement.

Appellant submitted June 16 to July 12, 2010 reports by an occupational therapist and June 16 and 18, 2010 physical therapy reports.

In a decision dated July 16, 2010, OWCP denied appellant's claim on the grounds of insufficient medical evidence establishing that he sustained a diagnosed medical condition as a result of the April 3, 2010 employment incident.

On August 4, 2010 appellant requested a review of the written record. In a July 20, 2010 report, he stated that his pain and numbness was improving with therapy. Dr. Maupin reviewed appellant's medical history and conducted an examination. He did not observe any atrophy, ecchymosis and edema in the left shoulder. Appellant tested negative for Hawkin's impingement, Neer impingement and cross arm adduction test. His left shoulder flexion was 170 degrees actively and external rotation at the side was 30 degrees actively. Dr. Maupin also did not observe any crepitus with range of motion of the left shoulder and strength on the left side was within normal limits. He diagnosed left shoulder pain.

Appellant also submitted an August 4, 2010 personal statement regarding the April 3, 2010 employment incident and occupational therapy reports dated July 9 to August 9, 2010.

By decision dated November 16, 2010, OWCP denied appellant's claim finding that the medical evidence failed to support that appellant sustained any diagnosed condition causally related to the accepted April 3, 2010 work event.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence.[3] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the two components of "fact of injury" have been established.[4] First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

ANALYSIS

OWCP accepted that on April 3, 2010 appellant tried to lift a heavy package on the mail truck and heard a pop in his shoulder but denied the claim on the grounds of insufficient medical evidence demonstrating that he sustained any left shoulder or hand condition as a result of the April 3, 2010 work event. The issue, therefore, is whether he met his burden of proof to establish that he sustained a left shoulder or hand injury causally related to the April 3, 2010 employment incident.

Appellant was first treated in the emergency room on April 4, 2010 by a physician's assistant and Dr. Kooistra noted that on Friday, appellant was lifting and moving a box of mail when he felt a pop in his left upper humerus and experienced stinging in his left shoulder. The

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[5] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[6] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, *supra* note 8; *D.S.*, Docket No. 09-860 (issued November 2, 2009).

examination revealed that appellant's left upper extremity had 3/5 strength in the left thumb abduction and left wrist extension and that appellant's C5-8 and T1 nerve root levels were good sharp-dull discrimination. Dr. Kooistra's provisional diagnosis was radial nerve palsy on appellant's left side. His report contains an accurate recitation of the history of injury. Although Dr. Kooistra provided a diagnosis of appellant's condition, he does not provide an opinion on the cause of appellant's hand condition nor relate his condition to the April 3, 2010 employment incident. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] Thus, Dr. Kooistra's report is insufficient to establish appellant's claim.

Appellant also submitted various medical reports by Dr. Maupin who noted appellant's complaints of pain and numbness in the left arm and provided an accurate history of injury. Various examinations revealed that appellant's rotator cuff, deltoid, biceps and triceps strength appeared well. Appellant also tested negative for Tinel's, left cubital tunnel, Formen's and Allen's test. X-rays of his left shoulder and elbow revealed good joint spaces with no significant spurring or arthritis and an April 13, 2010 electrodiagnostic study was also negative. Dr. Maupin diagnosed left upper extremity, shoulder and wrist pain. Pain, however, is a symptom, not a compensable medical diagnosis.[11] These reports, therefore, fail to provide a firm medical diagnosis of appellant's alleged condition. Similarly, Dr. Ellis' May 13, 2010 medical report, while reciting an accurate history of injury does not meet appellant's burden of proof as he did not find any evidence of radial tunnel syndrome, carpal tunnel syndrome and radiculopathy and did not provide any firm diagnosis of appellant's alleged condition.

In his June 18, 2010 report, Dr. Maupin opined that appellant had "probable left shoulder impingement." In an April 16, 2010 report, he also stated that appellant "may have had somewhat of a traction injury." The Board has held, however, that medical opinions that are speculative or equivocal in character are of diminished probative value.[12] Furthermore, Dr. Maupin fails to provide any examination findings or medical rationale to support these possible diagnoses and refute his earlier examination and test results. Thus, Dr. Maupin's diagnosis of "probable" shoulder impingement and traction injury do not constitute a firm, medical diagnosis.

In addition, appellant provided reports by an occupational therapist and physical therapist. As occupational and physical therapists are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[13]

[10] *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

[11] *Robert Broome*, 55 ECAB 339, 342 (2004).

[12] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[13] *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *E.H.*, Docket No. 08-1827 (issued July 8, 2009).

Because appellant failed to submit probative medical evidence providing a medical diagnosis of an injury or a medical opinion as to causal relationship, he did not meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left shoulder or hand condition causally related to the April 3, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 16 and July 16, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board